

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOHN BURTON,

Petitioner,

NO: CV-11-453-CI

v.

MAGGIE MILLER-STOUT,

Respondent.

ORDER ADOPTING REPORT AND
RECOMMENDATION, DIRECTING
TRANSFER TO NINTH CIRCUIT
COURT OF APPEALS AND
DENYING PENDING MOTIONS

Magistrate Judge Imbrogno filed a Report and Recommendation on January 6, 2012, recommending Mr. Burton's federal habeas petition be transferred to the Ninth Circuit Court of Appeals as it is a second or successive petition under 28 U.S.C. § 2244. Petitioner submitted Objections on January 18, 2012, ECF No. 9, asserting he submitted this second petition based on newly discovered evidence. Regardless, Petitioner must first obtain authorization from Ninth Circuit Court of Appeals before he may proceed in the District Court.

Having considered the record and being fully advised in this matter, **IT IS ORDERED** the Report and Recommendation, ECF No. 8, is **ADOPTED in its**

ORDER ADOPTING REPORT AND RECOMMENDATION . . . 1

1 entirety. **IT IS ORDERED** the District Court Executive shall **TRANSFER** this
2 case to the Ninth Circuit Court of Appeals, pursuant to 28 U.S.C. § 1631 and Ninth
3 Circuit Rule 22-3(a). **IT IS FURTHER ORDERED** all pending Motions are
4 **DENIED as moot.**

5 Petitioner is advised this transfer does not of itself constitute compliance
6 with § 2244(b)(3) and Ninth Circuit Rule 22-3; he must still file an application for
7 leave to proceed in the Court of Appeals and make the showing required by §
8 2244(b)(2). Petitioner is directed to consult this statute and Ninth Circuit Rule 22-
9 3 for further information.

10 **IT IS SO ORDERED.** The District Court Executive is directed to transfer
11 all original documents to the Ninth Circuit Court of Appeals. The District Court
12 Executive shall, however, retain a copy of the petition and of this Order in the file.
13 The District Court Executive is further directed to enter this Order, forward a copy
14 to Petitioner, and close the file.

15 **DATED** this 27th day of January 2012.

16
17 s/ Rosanna Malouf Peterson
18 ROSANNA MALOUF PETERSON
19 Chief United States District Court Judge
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